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**MINUTES OF THE HEARING ON THE PETITION FOR**

**HEARING # 11-11**

**A SPECIAL PERMIT, 22 ORCHARD DRIVE**

A public hearing of the Acton Board of Appeals was held in the Town Hall on Monday, August 1, 2011 at 7:30 pm in Room 126 on the petition by Richard Doherty for a **SPECIAL PERMIT** under Section 3.8.1.2 of the Zoning bylaw to allow the employment of up to two non-residents to work within the residence as part of a home-based environmental consulting business located at 22 Orchard Drive. Map D-2/Parcel 139.

Present at the hearing was Ken Kozik, Member; Jon Wagner, Member; Marilyn Peterson, Member; Cheryl Frazier, Board of Appeals Secretary; and Scott Mutch Zoning Enforcement Officer. Also present was the petitioner and one abutter.

Ken Kozik opened Hearing #11-11, read the contents of the file and asked the petitioner to begin.

Richard Doherty began by saying he's an Environmental Consultant interested in getting a Special Permit to allow up to two employees along with himself at his home at 22 Orchard Drive. Ken asked the petitioner what an Environmental Consultant business is. He said, for instance, if the Town of Acton hired an Environmental Consultant he would review the environmental reports and provide an opinion to the town on the severity of the environmental matters. He does this type of thing for various citizens groups and is also a Licensed Site Professional. If someone owns a Gas Station or some other property where the soil and ground water have been contaminated by chemicals he helps them comply with the regulations by assessing the problem, finds out what's in the soil and the ground water and what risk it might pose to people.

Ken asked what kind of chemicals he keeps and uses in his home. He said he has small quantities of methanol, small quantities of hydrochloric and nitric acid. He has 40 mil liter sample vials and if he put all the chemicals together he wouldn't get half a liter. He stores the chemicals in his basement in boxes. Occasionally he may have contaminated ground water in his home.

Ken asked if he has any employees working with him now. He has three part time employees, one who doesn't come to his home at all, another one that comes by once a month and he's been doing that for about a year to pick things up and one employee that works with him at his home four days a week about 6 hours a day. Ken asked about some of his clients and who they were. He explained.

Jon Wagner asked if you could tell from the street that his home is used as a business. He also asked the petitioner if he got permission from the Board of Health. The petitioner said he did speak with the Board of Health and they asked him about the quantities of the chemicals he had and they were satisfied. Jon then asked where the employees park when they come to his home. He said the majority of the time they park in his driveway. Jon asked if the testing of the samples are being done in an

outside lab, why are the chemicals kept in his home. He said he goes to contaminated properties, brings the samples back to his house and needs to have control and custody of the samples before he turns them over to the lab so he can document them. When he picks them up he has to preserve the samples with chemicals in his home until the company or lab that tests them picks them up. Marilyn asked if he has any intentions of expanding his business in the future. He does not at the present time. He said in fact one of the employees will be going back to teaching once they complete a project.

Ken asked Scott Mutch, Zoning Enforcement Officer if he had any comments or anything to add. Scott said one thing just triggered in his mind. He would need to check the Zoning bylaw to see if this property is in the Groundwater Protection District and if so which one. Scott looked it up and determined it is in Zone 4 of the district. He said he doesn't have an exact answer right now but his concerns are surrounding the storage of the chemicals. The subject property is in a Zone 4 of the groundwater protection and it satisfies the definition of the storage of hazardous materials but he's struggling where to compare this with the chart in the Zoning bylaw. Ken asked how long a sample might stay in his house. He said if he took it on a Friday, it might stay there over the weekend. Not usually any longer. Jon suggested if they come to a decision that it has to comply with all other bylaws it would give Scott the opportunity to investigate it and if he were then troubled by the fact that it exceeds some threshold then it would be in violation of the Special Permit. Scott said yes because the permit would be granted subject to those conditions. Jon said he thinks Scott is troubled because he doesn't know if this is permitted but rather than postpone this hearing and wait for his decision Jon suggested because their concern is if this is more detrimental and if they went down that road this would be permitted. Scott said if this property were in a Zone 1 or 2 the business would not be permitted, in a Zone 3 or a Zone 4 he doesn't know so Scott is leary to move forward and allow him to continue to operate there until this gets resolved. Ken said if they were to allow him the Special Permit to continue with two employees, subject to the condition that he comply and you find out after the hearing that he doesn't comply then he doesn't have a Special Permit. Scott said right now he does have a certificate to operate signed by health, zoning, and building department but he is a little troubled. The petitioner asked what section of the bylaws that Scott is quoting. He said the table is 4.3.7.2 and the definitions are 4.3.3.5 and 4.3.3.14.

Abutter and neighbor Ed Ellis, of 25 Orchard Drive abuts the property and said he has never been able to tell from the street that a business is being run from the property. There are no signs and very limited activity. He never sees any traffic in or out of the property only a car in the driveway occasionally.

Ken said he believed they have two options here. One is to close the hearing and render a vote with possible conditions or they can ask the petitioner if he'd like to continue this so that the town can make a decision on whether this is allowed in the first place. Marilyn said she would like to vote on it tonight with conditions. Jon is troubled by Scott's concerns so his preference is to continue the hearing. Marilyn is troubled by Scott's interpretation of the zoning bylaw section that describes the hazardous waste. Marilyn is thinking about scale of the hazardous materials. Ken would choose to make a decision tonight and if there is a problem let the Zoning Enforcement Officer deal with the enforcement of that.

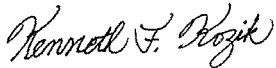
Marilyn added that she is troubled by Scott being troubled in a different way. Keeping something in small containers in his house she thinks is pushing this hazardous waste issue. She's thinking about the scale of what the petitioner is proposing. She still believes they should render a decision tonight but thinks Scott should get together with the Board of Health to see specifically what amounts of materials they consider significant. She thinks that's a very reasonable approach and protects Scott and the Board of Health and if there is endangerment to the ground water. Ken said he hasn't rendered an opinion but agrees with Marilyn and prefers to make a decision subject to the Zoning bylaw specifically with respect to the storing of chemicals and let the Zoning Enforcement Officer go after him if he has violated that and then revoke the Special Permit if that's the case.

Ken made a motion to close Hearing # 11-11. Marilyn so moved and Jon Wagner seconded the motion.

The Board voted to **GRANT** the **SPECIAL PERMIT** under Section 3.8.1.2 to allow an employment of up to two non residents subject to the following conditions:

That the home based environmental consulting business complies specifically with all the Zoning bylaws more particularly those related to the containment of Hazardous waste materials 4.3.3.7 and storage under 4.3.3.14 and the use regulations in Zone 4.

Marilyn Peterson will write the decision.



Respectfully submitted,

Kenneth F. Kozik

Chairman, Board of Appeals



Cheryl Frazier

Secretary, Board of Appeals